



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 31, 1994

Mr. Burton Raiford
Commissioner
Texas Department of Human Services
P.O. Box 14930
Austin, Texas 78714-9030

OR94-236

Dear Commissioner Raiford:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 24376.

The Texas Department of Human Services (the "department") received a request for copies of "Medical-Nursing Care Evaluations" and "Statements of Nursing Care" about a named nursing home patient. The requestor stated that he is the legal representative of the named patient. The requestor also asked the department to provide "Medical-Nursing Care Evaluations (Form 3652)" pertaining to other residents of the nursing home, with such information redacted to exclude patient identities. You state that the "great majority, if not all" of the patients whose records are sought are Medicaid recipients. You contend that the requested forms concerning these patients are excepted from public disclosure by section 552.101, which prohibits the release of information made confidential by other law. As to the information requested about the named patient, you seek a decision from this office "that the authorization provided is not sufficient as it is now written to allow release of non-deidentified information concerning the resident."

The department is the agency responsible for administering federal welfare programs such as Medicaid under the Social Security Act (chapter 7 of title 42 of the United States Code). To be eligible for the federal funding distributed under these programs, state assistance plans must meet certain federal requirements. 42 U.S.C. § 602; 42 C.F.R. § 431.300; Tex. Hum. Res. Code §§ 12.003, 21.012. Section 602(a)(9) of the Social Security Act provides that state plans must "provide safeguards which restrict the use or disclosure of information concerning applicants or recipients" to purposes that are directly connected with the administration of the plan.

To that purpose, section 21.012(a) of the Texas Human Resources Code provides that the department

shall establish and enforce reasonable rules governing the custody, use, and preservation of the department's records, papers, files, and communications. The department shall provide safeguards which restrict the use or disclosure of information concerning applicants for or recipients of the department's assistance programs to purposes directly connected with the administration of the programs.

Section 12.003 of the Human Resources Code makes it a criminal offense to disclose information about recipients or applicants except for purposes directly connected with the administration of the plan.

The department's rules provide for the release of information to agencies and officials when necessary for administering the program. There is also a provision for release of information to other individuals if there is a signed authorization from the client concerning that information.¹ 40 T.A.C. § 71.12(h). The following details are required to be in a valid written authorization:

- (1) statement to whom the information is to be released;
- (2) specific information to be released;
- (3) statement specifically authorizing the department to release the information;
- (4) purpose of the release;
- (5) statement about whether refusal to sign the release affects eligibility for or delivery of services; and
- (6) effective and termination dates or process by which authorization may be terminated.

Id. § 71.3(e).

In Open Records Decision No. 584 (1991) this office held that federal and state law prohibits the general release of information about applicants and recipients of Medicaid programs administered by the department, even when such information is "deidentified" by excluding client names. Therefore, the requested forms concerning Medicaid recipients are confidential and may not be released.² As to the individual nursing

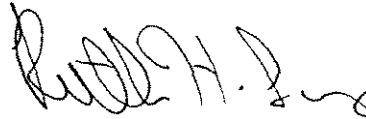
¹The rule also provides that "before using individual client releases, these requestors must attempt to secure needed information directly from the client."

²Since it appears that all of the records may involve Medicaid recipients, we do not at this time address privacy concerns of non-Medicaid patients or other confidentiality requirements concerning medical records. We note, however, that medical information about non-Medicaid patients may be protected by common-law privacy or by the Medical Practice Act, article 4495b, V.T.C.S. We also caution that release of confidential information can be a criminal violation. Gov't Code § 552.352

home patient about whom information is requested, the department received an authorization from a person purporting to be the representative of the individual patient. It is beyond the jurisdiction of this office to determine if the authorization meets the requirements set out by the department. We note, however, that the information may only be released in accordance with the department's guidelines to protect the confidentiality of *information about Medicaid applicants and recipients.*

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref.: ID# 24376, 24439, 24952, 24970

Enclosures: Submitted documents

cc: Mr. W. Tyler Moore, Jr., P.C.
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(w/o enclosures)